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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/917,359	07/27/2001	John Haines	050320-1040	9868
24504	7590	03/03/2006	EXAMINER	
THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP			RINES, ROBERT D	
100 GALLERIA PARKWAY, NW			ART UNIT	
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DATE MAILED: 03/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/917,359

Applicant(s)

HAINES ET AL.

Examiner

Robert D. Rines

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

*Notice to Applicant*

[1] This communication is in response to the patent application filed 27 July 2001. Claims 1-25 are pending.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

[2] Claims 8, 10, and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

[A] In claim 8 of the present case, the applicant recites the phrase/limitation "(TCP/IP) address of said patient information, within said storage unit, from said patient digital processor" (Claim 8; lines 2-4). Regarding the phrase/limitation "address of said patient information", it is unclear as to whether the applicant intends to convey that the TCP/IP is that of the patient information or the IP address of the patient's computer/digital processor. Further, regarding the

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phrase/limitation ", within said storage unit," it is unclear as to whether the applicant intends that the IP address is stored in the patient's computer or whether the medical care agent's computer/digital processor is receiving and then storing IP address of the patient's computer or whether the IP address is received within "said storage unit". As information by itself would not have an IP address, for the purpose of applying art, the examiner assumes the IP address is that of the patient's digital processor, and upon receiving patient information, the agent's computer notes the IP address of the patient's computer for identification purposes. However, appropriate correction/clarification is required. Therefore, claim 8 is rejected under 35 U.S.C. 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention.

[B] Claim 18, when analyzed in the same manner described above with respect to claim 8, is also rejected under 35 U.S.C. 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention.

[C] In claim 10 of the present case, the applicant recites the phrase/limitation "said medical care digital processor is capable of receiving a request for an additional medical care agent from said medical care agent digital processor" (Claim 10; lines 1/2). It is unclear as to whether the applicant intends to distinguish between "said medical care digital processor" and "said medical care agent digital processor". For the purpose of applying art, the examiner assumes that there are two "digital processors", a first processor associated with a first medical care agent and an additional processor associated with an additional medical care agent. However, appropriate

correction/clarification is required. Therefore, claim 10 is rejected under 35 U.S.C. 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

[3] Claims 1-5, 7, 9, 11-15, 17, and 19-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Davis et al., United States Patent Application Publication #2003/0028399.

[A] As per claim 1, Davis et al., discloses a system for providing medical care to a patient via a virtual call center, comprising: at least one patient digital processor capable of receiving and transmitting video and data (Davis et al.; Abstract, Fig. 1 and paragraph [0096]), wherein said at least one patient digital processor is controlled by at least one patient (Davis et al.; paragraphs [0096] [0107]); at least one medical care agent digital processor capable of receiving and transmitting video and data to said patient digital processor (Davis et al.; Abstract, Fig. 1 and paragraph [0096]), wherein said medical care digital processor is controlled by at least one medical care agent (Davis et al.; paragraphs [0096]); at least one storage unit for storing information regarding said patient and characteristics of said medical care agent (Davis et al.;

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paragraphs [0049] [0107] [0117] [0120]); and a medical care digital processor capable of receiving a request for medical care from said patient via said patient digital processor (Davis et al.; paragraph [0096]), determining an appropriate medical care agent from said storage unit to address said request for medical care (Davis et al.; paragraph [0049] [0096]), and connecting said patient digital processor and said appropriate medical care agent, via said medical care agent digital processor, as a result of said determination (Davis et al.; paragraphs [0049] [0096]).

[B] As per claim 2, Davis et al., discloses wherein said connection allows live video and data transmission between said patient and said appropriate medical care agent (Davis et al.; paragraphs [0037] [0039] [0096]).

[C] As per claim 3, Davis et al., discloses wherein said medical care agent information is provided by said medical care agent and is directly related to a medical purpose of said system (Davis et al.; paragraph [0096]).

[D] As per claim 4, Davis et al., discloses wherein said medical care agent provides said characteristics to said storage unit prior to said storage of said patient information within said storage unit (Davis et al.; paragraphs [0049] [0096]).

[E] As per claim 5, Davis et al., discloses wherein a series of medical care agents are provided by said system (Davis et al.; paragraph [0096]), and determination of said appropriate medical care agent is a reflection of the amount of time said appropriate medical care agent has

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been logged on to said system waiting to assist said patient (Davis et al.; paragraphs [0096] [0140] [0141]).

[F] As per claim 7, Davis et al., discloses wherein said determination of an appropriate medical care agent from said storage unit is performed by comparing said patient information to said characteristics of said medical care agent (Davis et al.; paragraphs [0049] [0096]).

[G] As per claim 9, Davis et al., discloses wherein said patient digital processor is a multi-point control unit and said medical care agent digital processor is a multi-point control unit (Davis et al.; paragraphs [0037] [0039] [0096]).

[H] As per claim 11, Davis et al., discloses system for providing medical care to a patient via a virtual call center, comprising: at least one first means for receiving and transmitting video and data (Davis et al.; paragraph [0096]), wherein said first means is controlled by at least one patient (Davis et al.; paragraph [0096]); at least one second means for receiving and transmitting video and data to said first means (Davis et al.; paragraph [0096]), wherein said second means is controlled by at least one medical care agent (Davis et al.; paragraph [0096]); at least one means for storing information regarding said patient and characteristics of said medical care agent (Davis et al.; paragraphs [0049] [0107] [0117] [0120]); and a means for receiving a request for medical care from said patient via said first means (Davis et al.; paragraph [0096]), determining an appropriate medical care agent from said storing means to address said request for medical care (Davis et al.; paragraphs [0096] [0049]), and providing a connection between said first

means and said appropriate medical care agent, via said second means, as a result of said determination (Davis et al.; paragraphs [0096]).

[I] As per claim 12, Davis et al., discloses wherein said connection allows live video and data transmission between said patient and said appropriate medical care agent (Davis et al.; paragraphs [0037] [0039] [0096]).

[J] As per claim 13, Davis et al., discloses wherein said medical care agent information is provided by said medical care agent and is directly related to a medical purpose of said system (Davis et al.; paragraphs [0049] [0096]).

[K] As per claim 14, Davis et al., discloses wherein said medical care agent provides said characteristics to said means for storing prior to said storage of said patient information within said means for storing (Davis et al.; paragraphs [0049] [0096]).

[L] As per claim 15, Davis et al., discloses wherein a series of medical care agents are provided by said system (Davis et al.; paragraph [0096]), and determination of said appropriate medical care agent is a reflection of the amount of time said appropriate medical care agent has been logged on to said system waiting to assist said patient (Davis et al.; paragraphs [0096] [0140] [0141]).



[M] As per claim 17, Davis et al., discloses wherein said determination of an appropriate medical care agent from said means for storing is performed by comparing said patient information to said characteristics of said medical care agent (Davis et al.; paragraph [0096]).

[N] As per claim 19, Davis et al., discloses a method for providing medical care to a patient via a virtual call center, comprising the steps of: creating a patient profile (Davis et al.; paragraphs [0049] [0092]); characterizing at least one medical care agent (Davis et al.; paragraphs [0049] [0096]); storing said patient profile and said characterization of said medical care agent (Davis et al.; paragraph [0096]); upon receiving a request for medical care from said patient, analyzing said patient profile to locate an appropriate medical care agent to address said request (Davis et al.; paragraph [0096]); and providing live interaction between said patient and said appropriate medical care agent, regardless of where the patient and medical care agent are located (Davis et al.; paragraph [0096]).

[O] As per claim 20, Davis et al., discloses wherein said live interaction comprises video and data transmission (Davis et al.; paragraphs [0037] [0039] [0096]).

[P] As per claim 21, Davis et al., discloses wherein said method is provided via the Internet (Davis et al.; Abstract)

[Q] As per claim 22, Davis et al., discloses wherein said step of characterizing said medical care agent is provided by said medical care agent and is directly related to a medical purpose of

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said method (Davis et al.; paragraphs [0049] [0096]).

[R] As per claim 23, Davis et al., discloses wherein a series of medical care agents are provided by said method (Davis et al.; paragraph [0096]), and said step of analyzing said patient profile to locate an appropriate medical care agent to address said request is a reflection of the amount of time said appropriate medical care agent has been logged on as available for said method to assist said patient (Davis et al.; paragraphs [0096] [0140] [0141]).

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

[4] Claims 10 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis et al.

[A] As per claim 10, While Davis et al., discloses wherein said medical care digital processor is capable of receiving a request for an additional medical care agent from said medical care agent digital processor (Davis et al.; paragraph [0048]), wherein a connection is then made between said patient digital processor, said appropriate medical care agent (Davis et al.; paragraph [0096]), Davis et al., fails to specifically teach a three way conference between the patient and two or more physicians/medical care agents.

[i] However, Davis et al., does teach a system designed to facilitate direct consultation between multiple clinicians and the patient via live video conferencing (Davis et al.; paragraphs [0039] [0096]). Further, an additional feature of Davis et al., is to provide multiple clinician interfaces to enable video clinical collaboration and electronic video consultation with patient and family members (Davis et al.; paragraph [0048]).

[ii] Based on the above noted teachings of Davis et al., it is the examiner's conclusion that it would have been obvious to one of ordinary skill in the art at the time the invention was made that Davis et al., is linking the primary physician with other clinicians as well as patients and family members and further that such collaboration/consultation occurs in the same session. The examiner's conclusion is motivated by the system structure established by Davis et al., discussed above, and Davis' objects of invention which include an intention to enable clinical collaboration among and between members of the community of care surrounding the patient (Davis et al.;

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paragraph [0012]) and further to enable a community of clinicians and caregivers to collaborate and serve the needs of patients (Davis et al.; paragraph [0085])

[B] As per claim 25, Davis et al., discloses further comprising the step of providing live interaction between said patient, said appropriate medical care agent and a second medical care agent upon receiving a request for medical care from said appropriate medical care agent (Davis et al.; paragraphs [0039] [0048] [0096] NOTE: see claim 10 analysis above).

[i] Regarding claim 25, the obviousness and motivation as discussed with regard to claim 10 above are applicable to claim 25 and are herein incorporated by reference.

[5] Claims 6, 8, 16, 18, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis et al., in view of McCormick, United States Patent Application Publication #2002/0120573.

[A] As per claims 6, 16, and 24, Davis et al., teaches a networked system but fails to specifically disclose a closed or Intranet system or method deployed on an Intranet.

[i] However, McCormick does teach wherein said system (claims 6 and 16) or method (claim 24) is provided or implemented within an Intranet (McCormick; paragraph [0040]).

[ii] It would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the teachings of Davis et al., with those of McCormick. Such combination would have enabled a community of clinicians and caregivers to collaborate and serve the needs of patients (Davis et al.; paragraph [0085]). The motivation to combine the teachings would have been to practice the invention of Davis et al., on an intranet, i.e., a smaller version of the Internet, to increase security by limiting connection to the members of the organization (McCormick; paragraph [0040]).

[B] As per claims 8 and 18, while Davis et al., discloses wherein said patient information is received by said medical care agent digital processor (Davis et al.; paragraph [0096]), Davis et al., fails to specifically teach receiving a Transmission Control Protocol/Internet Protocol (TCP/IP) address of said patient information, within said storage unit, from said patient digital processor.

[i] However, Davis et al., does teach an Internet-based system (Davis et al.; Abstract). As noted by McCormick, the Web is based on "hypertext" language and a transfer method known as "HTTP" (Hypertext Transfer Protocol), which is designed to run primarily over TCP/IP. Davis et al., further teaches identifying both the patient(s) and the doctor(s) by password (Davis et al.; paragraphs [0025] [0114]). As is noted by McCormick, password identification over the Internet commonly employs a TCP/IP communications routine when identifying an individual logging on to the system (McCormick; paragraph [0094]).

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[ii] Based on the above-analyzed features of Davis et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made that Davis et al., employs TCP/IP (Transmission Control Protocol/Internet Protocol) to enable data communications over Internet. The motivation would have been to transfer data/information using HTTP which is primarily designed to run over TCP/IP (McCormick; paragraph [0025]).

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Chen et al., INTELLIGENT REMOTE VISUAL MONITORING SYSTEM FOR HOME HEALTH CARE SERVICE, United States Patent #5,553,609

David et al., AMBULATORY PATIENT HEALTH MONITORING TECHNIQUES UTILIZING INTERACTIVE VISUAL COMMUNICATION, United States Patent #5,544,649

Jenkins et al., APPARATUS AND METHOD FOR COMPUTERIZED MULTI-MEDIA DATA ORGANIZATION AND TRANSMISSION, United States Patent #6,597,392

Moshfeghi et al., PERSONALIZING HOSPITAL INTRANET WEB SITES, United States Patent #6,076,166

Ombrellaro, MULTIFUNCTION TELEMEDICINE SOFTWARE WITH INTEGRATED  
ELECTRONIC MEDICAL RECORD, United States Patent Application Publication  
#2005/0149364

Matory, REMOTE PATIENT CARE, United States Patent Application Publication  
#2002/0010596.

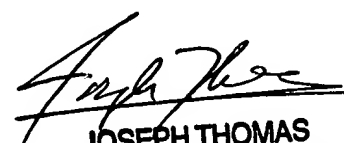
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert D. Rines whose telephone number is 571-272-5585. The examiner can normally be reached on 8:30am - 5:00pm Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 571-272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RDR

 11/1/05

  
JOSEPH THOMAS  
SUPERVISORY PATENT EXAMINER